

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CHARLES GILCHRIST,

No. C 07-05803 CRB

Plaintiff,

**ORDER GRANTING MOTION FOR
DEFAULT JUDGMENT**

v.

PROFESSIONAL TECHNICAL SECURITY
SERVICES INC.,

Defendant.

This is an ERISA action for unpaid contributions to Apartment Employees Pension Trust Fund and Apartment Employees Welfare Fund. Now before the Court is plaintiffs' motion for default judgment. Defendant Professional Technical Security Services has not responded to plaintiffs' motion even though the deadline has passed. See Northern District of California Civil Local Rule 7-3(a). After carefully considering the papers filed by plaintiffs, the Court concludes that oral argument is unnecessary, see Local Rule 7-1(b), and GRANTS the motion for default judgment.

BACKGROUND

Plaintiffs filed this ERISA action in November 2007 to recover unpaid contributions owed for the period January 1, 2002 through April 30, 2004, plus liquidated damages, interest, and attorney's fees and costs. Plaintiffs also seek an injunction directing defendant to submit to an audit for the period May 1, 2004 to the present. Defendant was served with

1 the complaint, but failed to answer or otherwise communicate with the Court. Default
2 against defendants was entered on February 6, 2008. Plaintiffs now move for a default
3 judgment.

4 Plaintiffs' evidence establishes that defendant has failed to make required
5 contributions for the above period in the total amount of \$25,351.20. The evidence also
6 proves that defendant owes plaintiffs \$3,518.67 in interest on the unpaid amount and
7 \$2,535.19 in liquidated damages. The record also establishes that defendant owes plaintiffs
8 \$5,076.25 in attorney's fees and \$638.25 in costs.

9 DISCUSSION

10 ERISA provides that
11 [e]very employer who is obligated to make contributions to a multiemployer
12 plan under the terms of a collectively bargained agreement shall to the extent
13 not inconsistent with law, make such contributions in accordance with the
14 terms and conditions of such plan or such agreement.
15 29 U.S.C. § 1145. ERISA also authorizes an award of interest on delinquent and unpaid
16 contributions, as well as liquidated damages and attorney's fees and costs in an action for
17 collection of contributions. See 29 U.S.C. § 1132(g). In the Ninth Circuit, to qualify for an
18 award of statutory liquidated damages, unpaid contributions must exist at the time the lawsuit
19 was filed. See Idaho Plumbers & Pipe Fitters Health and Welfare Fund v. United
20 Mechanical Contractors, Inc., 875 F.2d 212, 215 (9th Cir.1989). This requirement is satisfied
21 here.

22 As the allegations of the complaint are accepted as true, and as the evidence
23 establishes that defendant owes plaintiffs a sum certain, plaintiffs' motion for a default
24 judgment is GRANTED in the total amount of \$37,119.56. Defendant is further ordered to
25 submit to an audit by the plaintiffs, covering the time period beginning May 1, 2004 to the
26 present date, at defendant's premises or the location where the records are kept, during
27 business hours, and to allow the auditors to examine and copy such books, records, papers,
28

1 and reports relevant to the enforcement of the collective bargaining agreement or Trust
2 Agreements.

3 The Court will not issue an injunction ordering defendant to pay any delinquent
4 amounts discovered in the audit as such delinquency has not yet been discovered and
5 defendant is already obligated to pay such amounts, if any. The Court will issue a judgment
6 in accordance with this Order.

7 **IT IS SO ORDERED.**

8 Dated: March 26, 2008



CHARLES R. BREYER
UNITED STATES DISTRICT JUDGE